

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY  
DECISION NO. 523 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE

In the Matter of:

PRECEDENT  
DISABILITY DECISION  
No. P-D-384

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| FORMERLY<br>DISABILITY DECISION<br>No. 523 |
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STATEMENT OF FACTS

The claimant on December 19, 1954, appealed from the decision of a referee which held that he was not entitled to unemployment compensation disability benefits under section 2653 of the Unemployment Insurance Code.

The claimant was employed as a price clerk for seven months ending September 1, 1953, when he was laid off for lack of work.

Effective March 15, 1954, the claimant filed a claim for disability benefits in the Los Angeles office of the Department of Employment. Benefits were paid to him through September 21, 1954, for the maximum period of twenty-six consecutive weeks. These benefits were paid because of a continuous disability successively described and diagnosed by his physicians as "arthritis deformans toxic dermatitis;" "chronic toxic dermatitis;" "chronic arthritis, right knee will not bear weight;" "osteo arthritis advanced;" "chronic arthritis with recurrent acute attacks, he should be able to resume light work when the acute attacks subside;" and "chronic osteoarthritis, great difficulty in walking."

On September 21, 1954, the claimant signed a claim form in which he described his disability and how it occurred as follows: "late stages of osteoarthritis, probably due to too much walking on bad leg also spinal arthritis for many years now acute in right hip." The physician who completed the certificate of this claim form, diagnosed the condition as "osteo arthritis of right hip" and estimated the claimant would be disabled until December 21, 1954.

Between September 22, 1954, and October 11, 1954, the claimant sought work with some twenty-one employers and employment agencies. He worked one day on October 8, 1954, as a dishwasher, which was not his customary work. He quit because it was too difficult for him in view of his physical condition.

On October 18, 1954, the claimant signed a new claim supported by a medical certificate completed by a physician on October 19, 1954. This physician diagnosed the claimant's condition as "rheumatoid, spondylitis, depressive psychosis, mild, not incapacitating," and estimated he would be able to resume his customary work on December 1, 1954. This claim was filed in the San Diego office of the Department of Employment. On October 28, 1954, the department issued a determination which disallowed benefits under section 2853 of the code, on the ground that the claimant had been paid the maximum amount of disability benefits during a single period of disability.

At the hearing the claimant introduced statements completed by another physician on October 28 and 29, 1954, which read in part as follows:

"This is to certify that (claimant) is suffering from mental depression, which is incapacitating him totally at the present time for any kind of work.

"There also exists a physical disability of arthritis, which has become aggravated, and by itself has aggravated the mental and emotional instability.

"It appears that this aggravation of his condition has been caused by the inability to find a job in his efforts since September 20, 1954."

\* \* \*

"Regarding my statement of October 28, 1954, concerning (claimant), I should like to state that there exists good evidence for (claimant's) ability to perform his customary work between September 22 and October 10, 1954.

"I further believe that his inability to secure work during this period of time has caused a state of mental depression, starting on or about October 11, 1954 . . . ."

The issues are: (1) Was the claimant's period of disability interrupted to the extent that he was able to resume his customary work for a fourteen-day period between September 11, 1954, and October 11, 1954, as contended by him; and (2) was the claimant disabled by a new disability.

#### REASONS FOR DECISION

Section 2651 of the Unemployment Insurance Code provides:

"For periods of disability commencing on and after January 1, 1954, the total amount of unemployment compensation disability benefits and the weekly benefit amount payable during any one disability benefit period shall be computed as provided in this article."

Section 2653 of the code provides:

"The maximum amount of benefits payable during any one disability period shall be twenty-six times his weekly benefit amount."

Section 2608 of the code provides:

"Disability benefit period, with respect to any individual means the continuous period of unemployment and disability beginning with the first day with respect to which the individual files a valid claim for unemployment compensation

disability benefits. For the purposes of this part, two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period."

Section 2608 of Title 22 of the California Administrative Code provides as follows:

"A continuous period of unemployment and disability ends:

"(a) When an individual returns to and is able to perform his regular or customary work for a period of more than fourteen (14) days or

"(b) In the case of an unemployed individual when his physician furnishes a statement giving the date, in his opinion, that the individual was able to perform his regular or customary work for a period of more than fourteen (14) days."

In this case the claimant was paid disability benefits for twenty-six consecutive weeks through September 21, 1954, the maximum period allowed under sections 2651 and 2653 for any one period of disability commencing after January 1, 1954. In the various medical diagnoses submitted during the life of the claim filed effective March 15, 1954, the disability was generally described as arthritis. Although the claimant introduced a medical statement at the hearing which indicated that he was disabled by a mental condition, the physician who completed the medical certificate filed with the claim, recognized that the claimant had a mental condition but stated it was not disabling. After reviewing all of the evidence, it is our opinion that the claimant's unemployment on and after October 11, 1954, was due to the same or related disability which existed prior to September 21, 1954 and for which he received maximum benefits. Therefore, it is not compensable under section 2608 of the code unless it ended for a fourteen-day period between September 21, 1954, and October 11, 1954, as provided in section 2608 of Title 22 of the California Administrative Code.

Clearly subsection (a) of this last section has not been met or satisfied since it requires the individual's return to his regular or customary work and an ability to perform it for a period of more than fourteen days. Here the claimant returned to other than his customary work for one day only. The final question is whether the medical statement of his physician which reads in part "there exists good evidence, for (claimant's) ability to perform his customary work between September 22 and October 10, 1954," satisfies the requirements of subsection (b) of section 2608 of Title 22 of the California Administrative Code. In our opinion, the statement is not sufficiently specific. The alleged "good evidence" of the claimant's ability to resume his work is not detailed. In any event, in deciding whether the claimant was able to resume his customary work, we are not limited to a consideration of this medical statement only, but it is our responsibility to evaluate the pertinent evidence and resolve any conflicts (Disability Decision No. 77). Medical evidence from the claimant's other physicians attest to a continuous disability during this interim period. After considering all of the medical evidence, we are of the opinion that the claimant was not able to resume his customary work during any fourteen-day period between September 22, 1954, and October 11, 1954, under sections 2608 of the code and 2608(a) and (b) of Title 22 of the California Administrative Code.

DECISION

The decision of the referee is affirmed. Benefits are denied.

Sacramento, California, March 4, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No.523 is hereby designated as Precedent Decision No. P-D-384.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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MARILYN H. GRACE

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